

# **EXHIBIT A**

## CHAPTER 6 ENDNOTES

- 1 *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Red 13994 (2009).
- 2 See Letter from Judith A. Dumont, Director, Massachusetts Broadband Initiative, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137 (Jan. 8, 2010) (Dumont Jan. 8, 2010 *Ex Parte*) at 2 (noting that permitting requirements and procedures for rights of way, poles, conduits and towers "are key to the efficient and streamlined deployment of broadband," and that difficulties in such access "often prove to be the greatest impediment to the efficient, cost-effective, and timely deployment of broadband.").
- 3 We derive this estimate from several sources. OMNIBUS BROADBAND INITIATIVE, THE BROADBAND AVAILABILITY GAP, (forthcoming). See Letter from Thomas Jones, Counsel to FiberNet, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 07-245 (Sept. 16, 2009) (FiberNet Sept. 16, 2009 *Ex Parte*) at 20 (noting average cost for access to physical infrastructure of \$4,611-\$6,487 per mile); *Comment Sought on Cost Estimates for Connecting Anchor Institutions to Fiber—NBP Public Notice #12*, GN Docket Nos. 09-47, 09-51, 09-137, Public Notice, 24 FCC Red 12510 (2009) (NBP PN #12) App. A (Gates Foundation estimate of \$10,500-\$21,120 per mile for fiber optic deployment); see also Letter from Charles B. Stuckdale, Fibertech, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137 (Oct. 28, 2009) at 1-2 (estimating costs ranging from \$3,000-\$42,000 per mile).
- 4 One wireless carrier has cited instances in which it has been asked to pay a rental rate of \$1,200-\$3,000 per pole per year. See, e.g., Letter from T. Scott Thompson, Counsel for NextG Networks, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, RM-11293, RM-11303 (June 27, 2008) Attach. at 11.
- 5 See, e.g., Am. Cable Ass'n Comments in re National Broadband Plan NOI, filed June 8, 2009, at 8-9; *Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, Report and Order, 15 FCC Red 6453, 6507-08, para. 118 (2000) ("The Commission has recognized that small systems serve areas that are far less densely populated areas than the areas served by large operators. A small rural operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers.").
- 6 This analysis assumes that the customer purchases from an ILEC that rents all of its poles.
- 7 NCTA Comments in re American Electric Power Service Corp. et al., *Petition for Declaratory Ruling that the Telecommunications Rate Applies to Cable System Pole Attachments Used to Provide Interconnected Voice over Internet Protocol Service*, WC Docket No. 09-154 (filed Aug. 17, 2009) (Pole Attachments Petition), filed Sept. 24, 2009, App. B at 8-10; Letter from Thomas Jones, Counsel, Time Warner Telecom Inc., to Marlene H. Dortch, Secretary, FCC RM-11293, RM 11303 (Jan. 16, 2007) Attach., US Telecom Comments in re Pole Attachments Petition, filed Sept. 24, 2009, at 8; GEORGE S. FORD ET AL., PHOENIX CTRL, THE PRICING OF POLE ATTACHMENT: IMPLICATIONS AND RECOMMENDATIONS 7 (2008); Independent Telephone and Telecommunications Alliance (ITTA) Comments in re Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245, Notice of Proposed Rulemaking, 22 FCC Red 20195 (2007) (Pole Attachments NPRM), filed Mar. 7, 2008. As Pelcovits notes, monthly cost assumes 35 poles per mile and a 30% take rate. NCTA Comments in re Pole Attachments Petition, filed Sept. 24, 2009, App. B at 14. Additionally, this analysis assumes that all poles are rented by the broadband provider and not owned by it.
- 8 The variation in rates charged to incumbent LECs also can arise from the history of pole ownership by the incumbent LECs and certain "joint use" agreements that exist between some incumbent LECs and electric utilities.
- 9 See, e.g., Nat'l Cable & Telecom. Ass'n v. Gulf Power Co., 534 U.S. 327 (2002).
- 10 See, e.g., Alabama Power Co. v. FCC, 311 F.3d 1357 (11th Cir. 2002); FCC v. Florida Power Corp., 480 U.S. 245 (1987).
- 11 See, e.g., Letter from Daniel L. Brenner, Counsel, Bright House Networks, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137 (Jan. 8, 2010) Attach. at 4; Letter from Daniel L. Brenner, Counsel, Bright House Networks, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137 (Feb. 16, 2010) Attach. (Affidavit of Nick Lenuchi) (providing example of how application of higher telecommunications rate for poles would increase expense of deploying Fast Ethernet connections to a large school district by \$220,000 annually) (NCTA Comments in re Pole Attachments Petition, filed Sept. 24, 2009, at 15-17).
- 12 *Iw Telecom et al. Comments in re NBP Staff Workshops PN (The Commission Welcomes Responses to Staff Workshops*, GN Docket No. 09-51, Public Notice, 24 FCC Red 11592 (WCB 2009) (NBP Staff Workshops PN)), filed Sept. 15, 2009, at 14.
- 13 FiberNet Sept. 16, 2009 *Ex Parte* Attach.: Letter from Thomas Jones, Counsel, FiberNet, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, GN Docket No. 09-51 (Nov. 16, 2009) (filed by One Communications Corp.) (FiberNet Nov. 16, 2009 *Ex Parte*) at 3 (providing cost estimate breakdown). Similarly, Fibertech reports that it pays pole owners anywhere from \$225-\$780 to move a single cable on a pole, even though it estimates that it could do the work itself for \$60. Fibertech Comments in re NBP PN #12, filed Oct. 26, 2009, at 2-3; see also Dumont Jan. 8, 2010 *Ex Parte* at 5-6 (proposing changes to pole attachment regulations so as to "facilitate easier access to existing infrastructure," including reform to the application and make-ready process).
- 14 FiberNet Nov. 16, 2009 *Ex Parte* Attach. C (providing cost estimate breakdown).
- 15 Letter from Kelley A. Shields, Counsel, Fibertech and Kentucky DataLink, Inc. (KDL), to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-51, WC Docket No. 07-25, RM-11293, RM-11303 (Jan. 7, 2009) Attach. 2 at 2.
- 16 Letter from Joseph R. Lawhon, Counsel, Georgia Power Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, GN Docket Nos. 09-29, 09-51 (Nov. 17, 2009) Attach. B (noting one example covering 294 poles in Georgia in which the electric utility completed its work within 55 days but in which the process of coordinating with existing attachers took an additional 5 months).
- 17 The FCC has already decided that utilities cannot discriminatorily prohibit such techniques when they use those techniques themselves. See *Subsiver Comm'n, Inc. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Red 20536, 20543-44 (EB 2007); *Cavalier Tel. v. Virginia Elec. and Power Co.*, Order and Request for Information, 15 FCC Red. 9563, 9572 (EB 2000). One provider asserts that rules allowing these practices more generally in Connecticut has allowed it to deploy many more miles of fiber in its Connecticut markets. Fibertech & KDL Comments in re Pole Attachments NPRM, filed Mar. 25, 2009, at 7-8.
- 18 Letter from John T. Nakahata, Counsel to Fibertech and KDL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, RM 11293, RM 11303, GN Docket Nos. 09-29, 09-51 (July 29, 2009) at 7.
- 19 *Implementation of Section 703(e) of the Telecommunications Act of 1996: Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Red 6777, 6787-88, para. 17 (1998) (1998 Pole Attachment Order).
- 20 See, e.g., Crown Castle Comments in re Pole Attachments NPRM, filed Mar. 11, 2008, at 7 (12 month delay); Sunesys Comments in *Petition for Rulemaking of Fibertech Networks, LLC*, RM-11303 (Dec. 7, 2005) (Fibertech Petition), filed Jan. 30, 2006, at 11 (15 months); The DAS Forum Comments in re Pole Attachments NPRM, filed Mar. 7, 2008, at 11 (3 years); T-Mobile Comments in re Pole Attachments NPRM, filed Mar. 7, 2008, at 7 (4 years).
- 21 See, e.g., Fibertech & KDL Comments in re Pole Attachments NPRM, filed Mar. 25, 2009, at 4 (describing project to construct fiber to three rural school districts in Kentucky that KDL was unable to complete because of pole access delays); 1998 Pole Attachment Order, 13 FCC Red. at 6788, para. 17 (delays in resolving access disputes can "delay a telecommunication's carrier's ability to provide service and unnecessarily obstruct the process").
- 22 *Order Adopting Policy Statement on Pole Attachments*, Case 03-M-0432 (New York Pub. Serv. Comm'n 2004) (New York Timeline Order) (requiring that all work be completed in 105 days), available at [116 FEDERAL COMMUNICATIONS COMMISSION WWW.BROADBAND.GOV](http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={0C4902C-7B96-4E20-936B-2174CE0621A7}; Review of the State's Public Service Company Utility Pole Make-Ready Procedures</i>, Decision, Docket No. 07-02-13 (Conn. Dep't of Pub. Util. Control, Apr. 30, 2008) (Connecticut Timeline Order) available at</li>
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## CHAPTER 6 ENDNOTES

- [http://www.dpuc.state.ct.us/dockhist.nsf/8e6fc37a54110e3e852576190052b64d/69ecb9118f035bc38525755a005df44a/\\$FILE/070213-043008.doc](http://www.dpuc.state.ct.us/dockhist.nsf/8e6fc37a54110e3e852576190052b64d/69ecb9118f035bc38525755a005df44a/$FILE/070213-043008.doc) (90 days or 125 days when poles must be replaced).
- 23 See, e.g., *Fibertech Comments in re NBP PN #12*, filed July 21, 2009, Attach. (noting that since implementing timelines, in Connecticut it takes pole owners an average of 89 days to issue licenses and New York pole owners average 100 days for Fibertech's applications, compared to longer intervals elsewhere).
- 24 See, e.g., *Connecticut Timeline Order: New York Timeline Order*; Utah Admin. Code § R746-345-3; Vermont Public Service Board, Rules 3.708; See also *Utility Pole Make-Ready Procedures*, Docket No. 07-02-13 (Conn. Dep't of Pub. Util. Control, 2008), available at <http://www.dpuc.state.ct.us/dockhist.nsf/8e6fc37a54110e3e852576190052b64d/69ecb9118f035bc38525755a005df44a?OpenDocument>; *Sunsys Comments in re National Broadband Plan NOI*, filed June 8, 2009, at 6 ("By permitting pole owners to have an uncapped and unspecified period of time in which to issue a permit, many pole owners have caused tremendous delays in the process, thereby undermining broadband deployment."); Letter from Jacqueline McCarthy, Counsel, Broadband & Wireless Pole Attachment Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245 (Feb. 23, 2009) at 1-5.
- 25 Wireless providers assert that negotiations with pole owners to attach wireless devices "often face a period of years in negotiating pole agreements." NTIA, *The Wireless Infrastructure Association & The DAS Forum Comments in re National Broadband Plan NOI*, filed June 8, 2009, at 7. As telecommunications providers, wireless providers have the right to attach to poles under Section 224 of the Act to provide service.
- 26 Letter from Joshua Seidemann, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, RM-11293, WC 09-154 (Dec. 22, 2009) (ITTA Dec. 22, 2009 *Ex Parte*) at 3 (noting a pole attachment dispute pending before a state for five years before the parties settled).
- 27 See 47 C.F.R. §§ 1.1404-1.1410 (pole attachment complaint procedures).
- 28 See, e.g., ITTA Dec. 22, 2009 *Ex Parte* at 3 (noting that one provider alone deals with 600 separate entities and that the "lack of uniform rules, standards, and oversight makes negotiating reasonable attachment terms very difficult and extremely time consuming").
- 29 FEEL MINISTRY OF ECON. & TECH. GOV'T OF GERMANY, THE FEDERAL GOVERNMENT'S BROADBAND STRATEGY 12 (2009), available at <http://www.bmwi.de/English/Redaktion/Pdf/broadband-strategy,property=pdf,bereich=bmwi,spache=en,rwb=true,pdf>.
- 30 For example, many pole owners utilize the National Joint Utilities Notification System (NJUNS) for maintaining and communicating data about their pole infrastructure. See generally National Joint Utilities Notification System—NJUNS, Inc., [http://www.njuns.com/NJUNS\\_Home/default.htm](http://www.njuns.com/NJUNS_Home/default.htm) (last visited Mar. 2, 2010).
- 31 *NETAC Comments in re Pole Attachments Petition*, filed Sept. 24, 2009, App. B (Declaration of Dr. Michael D. Pelcovits) Attach. 2 (Methodology and Sources) at 1-3.
- 32 Nineteen states and the District of Columbia (representing approximately 45% of the U.S. population) have exercised this type of "reverse preemption" and have certified that they directly regulate utility-owned infrastructure in their regions. See *Corrected List of States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 07-245, Public Notice, 23 FCC Red 4878 (WCB 2008), Section 224(a)(1) expressly excludes poles owned by cooperatives from regulation, an exemption that dates back to 1978. According to the National Rural Electric Cooperative Association, electric co-operatives own approximately 42 million poles. Letter from David Predmore, National Rural Electric Cooperative Association, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137, WC Docket No. 09-245 (Feb. 26, 2010). The exclusion of co-operatives from Section 224 regulation may impede broadband deployment in rural areas. For instance, one small broadband cable company claims that it ceased offering service in two rural communities in Arkansas because of an increase in pole attachment rates by unregulated electric cooperatives that owned the poles in those communities. Letter from Bennett W. Hooks, Jr., Buford Media Group, LLC, to Bernadette McGuire-Rivera, Assoc. Adm'r, Office of Telecom. & Info. Admin., Dep't of Comm. (Apr. 13, 2009) at n.2, 3, available at <http://www.ntia.doc.gov/broadbandgrants/comments/79C5.pdf>.
- 33 For a review of various approaches to state and local rights of way policies, see NTIA, *STATE AND LOCAL RIGHTS OF WAY SUCCESS STORIES*, available at <http://www.ntia.doc.gov/ntiahome/staterow/ROWstaterowstories.pdf>.
- 34 In 2003, the NTIA compiled a comprehensive survey of state rights-of-way approaches that may be found at NTIA, *Rights-of-Way Laws by State*, <http://www.ntia.doc.gov/ntiahome/staterow/rowtableexcel.htm> (last visited Feb. 18, 2010). In 2002, the National Association of Regulatory Utility Commissions undertook a similar project and issued a comprehensive report. See NARUC, *PROMOTING BROADBAND ACCESS THROUGH PUBLIC RIGHTS-OF-WAY AND PUBLIC LANDS* (July 31, 2002).
- 35 See, e.g., *Level 3 Comments in re National Broadband Plan NOI*, filed June 8, 2009, at 19; *Windstream Comments in re National Broadband Plan NOI*, filed June 8, 2009, at 2; *Verizon Comments in re National Broadband Plan NOI*, filed June 8, 2009, at 66; *Qwest Comments in re National Broadband Plan NOI*, filed June 8, 2009, at 27. Sunsys urges the FCC to "clarify the standards related to timely and reasonably priced access to necessary governmental rights of way." *Sunsys Comments in re NBP PN #7* (Comment Sought on the Contribution of Federal, State, Tribal, and Local Government to Broadband—NBP Public Notice #7, GN Docket Nos. 09-47, 09-51, 09-137, Public Notice, 24 FCC Red 12110 (WCB 2009) (NBP PN #7)), filed Nov. 6, 2009, at 4.
- 36 See, e.g., NATOA et al. Reply in re NBP PN #30, (Reply Comments Sought in Support of National Broadband Plan—NBP Public Notice #30, GN Docket Nos. 09-47, 09-51, 09-137, Public Notice 25 FCC Red 241 (2010) (NBP PN #30) filed Jan. 27, 2010, at 12-13; NATOA et al. Comments in re NBP PN #7, filed Nov. 7, 2009, at 46-47; City of New York Comments in re NBP PN #7, filed Nov. 6, 2009, at 8; City and County of San Francisco Comments in re NBP PN #7, filed Nov. 6, 2009, at 16-20. But cf. Dumont Jan. 8, 2010 *Ex Parte* at 2 (noting that "difficulties involved in negotiating and gaining access to the rights of way often prove to be the greatest impediment to the efficient, cost-effective, and timely deployment of broadband").
- 37 For example, the Broadband Principles adopted by the National Association of Telecommunications Officers and Advisors (NATOA), an organization for local government agencies, staff and public officials, states that "[t]he desired development of high capacity broadband networks and broadband services will require extensive collaboration among parties: local communities, regions, state governments, national government, the private sector, interest groups, and others." NATOA et al. Comments in re National Broadband Plan NOI, filed Jun. 8, 2009, at 3; see also Gary Gordier, CIO and IT Director, El Paso, Texas, Remarks at the FCC State and Local Government Workshop 161 (Sept. 1, 2009) ("There needs to be a lot better coordination across all jurisdictional levels to economize and share jointly in the infrastructure"), available at [http://www.broadband.gov/docs/ws\\_19\\_state\\_and\\_local.pdf](http://www.broadband.gov/docs/ws_19_state_and_local.pdf); Ray Baum, Comm'r, Oregon Pub. Util. Comm'n, Remarks at FCC State and Local Government Workshop 61 (Sept. 1, 2009) ("[W]e have a lot of infrastructure out there owned by utilities[,] both public and private[,] that sitting there that could be better utilized than it is today"); Lori Sherwood, Cable Adm'r, Howard County, Maryland, Remarks at the FCC State and Local Government Workshop 120 (Sept. 1, 2009) ("We have an opportunity to do this right and 25 years from now we don't want to say that we should have done a better job coordinating and talking to each other. For development of a national policy, the FCC should draw on its decade of government experiences including local governance").
- 38 See note 34, *supra*.
- 39 See 47 U.S.C. § 253(c).
- 40 A public record search by FCC Staff revealed that since passage of the 1996 Act, the FCC has taken an average of 661 days to resolve Section 253 disputes filed before it, and federal district court litigation of similar disputes has taken an average of 580 days to conclude. Disputes often extend further through review by courts of appeal, as well.
- 41 See NATOA et al. Reply in re NBP PN #30, filed Jan. 27, 2010, at 38 (recommending that the FCC "consider creating a special task force" of rights-of-way experts that would "catalog federal, state, and local right-of-way practices and fees in an effort to identify and articulate existing best practices being employed by federal, state, and local authorities for different categories of public rights of way and infrastructure."). As proposed by NATOA, the task force "could also examine and report to the Commission regarding the advantages and disadvantages of alternative forms of compensation for use of public rights of way, and other rights of way related infrastructure, such as poles and conduits." *Id.* at 39.

## CHAPTER 6 ENDNOTES

- 42 See NATOA et al. Reply in re NBP PN #30, filed Jan. 27, 2010, at 38–39.
- 43 Memorandum on Improving Rights-of-Way Management Across Federal Lands to Spur Greater Broadband Deployment, 40 WKLY. COMP. PRESS. DOC. 696 (May 3, 2004).
- 44 Memorandum on Facilitating Access to Federal Property for the Siting of Mobile Services Antennas, 31 WKLY. COMP. PRESS. DOC. 1424 (Aug. 10, 1995).
- 45 See Letter from Thomas Cohen, Counsel for the Fiber to the Home Council, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (Oct. 14, 2009).
- 46 "Splicing" includes splice kit, installation of splicing enclosure, and splicing of fiber. Splice kit is excluded from "materials" cost. Cost of construction in joint deployment case refers to construction of a single 1-mile, 2" conduit containing 216-count fiber, when coordinated with a road construction project. Additional costs reflect the same project independent of road construction. Letter from Matthew R. Johnson, Legal Fellow, NATOA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (Sept. 17, 2009) (attaching COLUMBIA TELECOMM. CORP. BRIEF ENGINEERING ASSESSMENT: EFFICIENCIES AVAILABLE THROUGH SIMULTANEOUS CONSTRUCTION AND CO-LOCATION OF COMMUNICATIONS CONDUIT AND FIBER (bks. 1, 2 (2009))).
- 47 Moratoria on re-opening streets for further telecommunications facilities could impede broadband deployment in certain circumstances.
- 48 DEPT. OF PUBLIC WORKS, CITY AND COUNTY OF SAN FRANCISCO, ORDER NO. 176,707 (INSD): REGULATIONS FOR EXCAVATING AND RESTORING STREETS IN SAN FRANCISCO § 5 (Mar. 26, 2007), available at [http://www.sfgov.org/site/uploadedfiles/sfdpw/bsm/secc/DPW\\_Order\\_176-707.pdf](http://www.sfgov.org/site/uploadedfiles/sfdpw/bsm/secc/DPW_Order_176-707.pdf); see also City and County of San Francisco Department of Public Works, Coordinating Street Construction, [http://www.sfgov.org/site/sfdpw\\_page.asp?id=32429](http://www.sfgov.org/site/sfdpw_page.asp?id=32429) (last visited Jan. 4, 2010).
- 49 Pub. Improvement Comm'n, City of Boston, Policy Relating to Grants of Location for New Conduit Network for the Provision of Commercial Telecommunications Services (Aug. 4, 1988), as amended.
- 50 Hardik V. Bhatt, CIO, City of Chicago, Remarks at FCC State and Local Governments: Toolkits and Best Practices Workshop (Sept. 1, 2009), available at [http://www.broadband.gov/docs/ws\\_19\\_state\\_and\\_local.pdf](http://www.broadband.gov/docs/ws_19_state_and_local.pdf); see also *id.* at 94 ("we have now started knowing every time a street gets dug up either for putting in a traffic signal interconnect, or putting some street light interconnects, or maybe a private utility has dug up the street, we have an opportunity to see if we could leverage that digging up of the street and maybe put conduit or if conduit is there to put fiber there").
- 51 Gordon Cook, *Amsterdam's Huge FTTH Build*, BROADBAND PROPERTIES, Sept. 2006, at 68.
- 52 NATOA et al. Comments in re NBP PN #7, filed Nov. 9, 2009, App. at 14.
- 53 Dumont Jan. 8, 2010 *Ex Parte* at 3.
- 54 Dumont Jan. 8, 2010 *Ex Parte* at 4 (recommending "a mechanism to ensure that all U.S. Department of Transportation projects are deploying conduit, and that space is created for four cables").
- 55 Dumont Jan. 8, 2010 *Ex Parte*.
- 56 United States Department of the Interior, National Atlas of the United States, <http://www.nationalatlas.gov/printable/fedlands.html> (last visited Jan. 7, 2010).
- 57 General Services Administration, GSA Properties Overview, [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_OVERVIEW&contentId=8513](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=8513) (last visited Jan. 7, 2010).
- 58 Memorandum on Facilitating Access to Federal Property for the Siting of Mobile Services Antennas, 31 WEEKLY COMP. PRESS. DOC. 1424 (Aug. 10, 1995).
- 59 See Siting Antennas on Federal Property, 41 C.F.R. §§ 102-79.70–.100.
- 60 GSA, *GSA's National Antenna Program Wins Vice President Al Gore's Hammer Award Agency's National Antenna Program Fosters Innovation and Saves Tax Dollars, Showing Government Can Work Better and Cost Less*, GSA #9552 (press release), Jan. 13, 1999 (GSA, *GSA's National Antenna Program*), [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=9125](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=9125).
- 61 GSA, *GSA's National Antenna Program*. These facts have been confirmed via follow-up e-mails and conversations with GSA.
- 62 NTIA, IMPROVING RIGHTS-OF-WAY MANAGEMENT ACROSS FEDERAL LANDS: A ROADMAP FOR GREATER BROADBAND DEPLOYMENT 31–33, available at <http://www.ntia.doc.gov/reports/fedrow/frowreport> (discussing applicable statutes and agency procedures). For example, the Federal Land Policy Management Act of 1976, which applies to the Department of Interior Bureau of Land Management and National Forest Service, requires that "fair market value, as determined by the Secretary," 43 U.S.C. § 1764(g). In addition, OMB Circular A-25 (rev'd), § 6(a)(2)(b) requires that agencies assess "user charges based on market prices," although exceptions can be granted.

## **EXHIBIT B**





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April 26, 2010

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: Notice of Ex Parte Communications –

WC Docket No. 07-245 ("Pole Attachment Proceeding");  
GN Docket No. 09-29 ("Rural Broadband Strategy Proceeding");  
GN Docket No. 09-51 ("National Broadband Plan Proceeding"); and  
WC Docket No. 09-154 ("VoIP Pole Attachment Rate Proceeding")

Dear Ms. Dortch:

On behalf of Allegheny Power, Baltimore Gas and Electric Co., Dayton Power and Light Co., FirstEnergy Corp., Kansas City Power and Light, National Grid, NSTAR and PPL Electric Utilities (the "*Coalition of Concerned Utilities*"), this is to provide notice pursuant to Section 1.1206 of the Commission's Rules that on April 23, 2010, the undersigned met with Edward P. Lazarus, Chief of Staff, to object that the numerous comments and ex parte presentations by electric utilities and their associations were completely ignored by the Commission staff in the Pole Attachment section of the recent National Broadband Plan.

As discussed with Mr. Lazarus, comments from cable companies, Competitive Local Exchange Carriers ("CLECs"), Incumbent Local Exchange Carriers ("ILECs") and other representatives of those who attach to utility poles are cited liberally throughout Chapter 6 of the Plan ("*Infrastructure*") – *but not even one of the many substantive comments and ex parte presentations by representatives of the electric utility industry is even mentioned, let alone considered or analyzed, in the Plan.* This is not an administrative oversight; it is an inaccurate and unfair distortion of the record.

## KELLER AND HECKMAN LLP

Ms. Marlene H. Dorcth

April 26, 2010

Page 2

Regarding the substantive issues presented, we discussed two ex parte letters to Chairman Genochowski summarizing the *Coalition's* concerns.<sup>1</sup> Copies of the letters are attached hereto and were provided to Mr. Lazarus. In particular, we discussed the following issues described in further detail in the attached letters:

- Mandatory Attachment Deadlines and Operational Constraints are Dangerous and Misleading
- Wireless Attachments Must be Handled on a Case-by-Case Basis, Not Mandated Nationwide
- Unauthorized Attachments and Safety Violations are Rampant and Must be Addressed by the Commission
- Attachment Rates are Unfair and Discriminate in Favor of one Industry (Communications) Over Another (Electric Utility)
- Continued Rate Subsidies Will not Promote Rural Broadband Deployment
- VoIP Should be Subject to at Least the Telecom Rate
- Any Uniform Broadband Attachment Rate Must Exceed the Telecom Rate
- ILECs are not Subject to the Pole Attachment Act

\* \* \*

As discussed with Mr. Lazarus, none of these issues is even raised in the staff's recent National Broadband Plan. Instead, the staff ignored all of the utility industry's concerns and presented a one-sided "wish list" for broadband attachers as if it were noncontroversial and beyond debate. This was not a case where one side was emphasized more than another. There is not even a recognition that there is "another side of the story."

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<sup>1</sup> Letter to the Honorable Julius Genachowski, Chairman FCC, and Commissioners, February 26, 2010, from Jack Richards and Thomas B. Magee, Keller and Heckman LLP, Counsel for the *Coalition of Concerned Utilities*, attaching a letter to Mr. Genachowski from Mr. Richards and Mr. Magee dated February 26, 2010.

KELLER AND HECKMAN LLP

Ms. Marlene H. Dorcith  
April 26, 2010  
Page 3

In light of the single-minded and obviously biased Broadband Plan, I encouraged Mr. Lazarus to revisit the Commission's aggressive schedule for resolving the Pole Attachment proceeding within the Second Quarter pursuant to its publicized list of "Proposed 2010 Key Broadband Action Agenda Items." Without the benefit of further proceedings, we expect the blatantly one-sided staff report to unfairly influence the public and the Commission. We therefore urge the Commission to withhold precipitous and unfounded action adverse to the electric utility industry and its consumers regarding Pole Attachments.

Please feel free to contact the undersigned if you have any questions or require any additional information.

Sincerely,



Jack Richards

ATTACHED: Letters to the Honorable Julius Genachowski, Chairman FCC, and  
Commissioners, dated February 26 and March 25, 2010

cc: (By electronic distribution and U.S. Mail)

Edward P. Lazarus  
Blair Levin  
Priya Aiyar  
Jennifer Schneider  
Angela Kronenberg  
Christine Kurth  
Christi Shewman  
William Dever  
Ian Dillner  
Sharon Gillett  
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March 25, 2010

The Honorable Julius Genachowski  
The Honorable Michael J. Copps  
The Honorable Robert M. McDowell  
The Honorable Meredith Attwell Baker  
The Honorable Mignon Clyburn  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

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RE: Notice of Written Ex Parte Communication  
GN Docket No. 09-51 ("National Broadband Plan Proceeding");  
WC Docket No. 07-245 ("Pole Attachment Proceeding");  
GN Docket No. 09-29 ("Rural Broadband Strategy Proceeding"); and  
WC Docket No. 09-154 ("VoIP Pole Attachment Rate Proceeding")

Dear Chairman and Commissioners:

As representatives of eight electric utilities (Allegheny Power, Baltimore Gas and Electric, Dayton Power & Light, FirstEnergy, Kansas City Power & Light, National Grid, NSTAR and PPL: the "Coalition of Concerned Utilities"<sup>1</sup>), we turn to you in frustration since our numerous comments and ex parte presentations – along with those by other electric utilities and their associations – were completely ignored by the Commission staff in the Pole Attachment section of the recent National Broadband Plan.<sup>2</sup>

While supporting the deployment of broadband nationwide, the electric utility industry repeatedly has implored the Commission not to do so at the expense of the safe, reliable and efficient operation of electric utility distribution systems – particularly in these times of rising energy costs and performance concerns regarding the electric distribution grid. Rather than addressing the electric industry's serious concerns regarding Pole Attachments, the staff ignored them.

Although comments from cable companies, Competitive Local Exchange Carriers ("CLECs"), Incumbent Local Exchange Carriers ("ILECs") and other representatives of those who attach to utility poles (e.g., the National Cable & Telecommunications Association, NextG

<sup>1</sup> The members of our *Coalition* collectively provide electric services to more than 14,200,000 customers in 11 States. They own, in whole or in part, more than 8,100,000 electric distribution poles.

<sup>2</sup> Last month, on behalf of our *Coalition*, we summarized our concerns in an ex parte letter to the Chairman. A copy is attached for reference (Exhibit A). It includes a list of filings by the *Coalition*.

KELLER AND HECKMAN LLP

The Honorable Julius Genachowski, et al.

March 25, 2010

Page 2

Networks, the American Cable Association, Time Warner Telecom, Bright House Networks, FiberNet, Kentucky Data Link, Crown Castle, DAS Forum, T-Mobile, Broadband & Wireless Pole Attachment Coalition, PCIA-The Wireless Infrastructure Association, Independent Telephone and Telecommunications Alliance, Level 3, Windstream, Qwest, Verizon, Sunesys and Fiber to the Home Council) are cited liberally throughout Chapter 6 of the Plan ("Infrastructure"), *not even one of the numerous substantive comments and ex parte presentations by representatives of the electric utility industry is even mentioned*. This is not an administrative oversight; it is a distortion of the record that would not withstand legal challenge if the Plan were a Commission order instead of a policy statement.

Although one would never learn it from the Broadband Plan, electric utilities already have done far more than their fair share to facilitate the deployment of broadband services. For decades, communications companies have attached to tens of millions of utility poles -- at artificial and extremely modest rates mandated by the Commission -- without incurring the substantial cost and inconvenience of constructing their own distribution systems. Cable companies and CLECs simply "hop on board" the utilities' systems at costs far below what they would have incurred had they been required to build-out their own systems.

In return for making their internal distribution systems available for years to attachers throughout the country, utilities have been "rewarded" with unfair and discriminatory pole attachment rates, countless unauthorized attachments, myriad safety violations and innumerable administrative burdens incident to allowing other parties to use their poles. None of these serious concerns is even mentioned in passing in the Broadband Plan.

Among other things, the staff now recommends (without any consideration whatsoever of contrary arguments by the electric utility industry) that the Commission:

- (1) lower the rates for CLEC and ILEC pole attachments to the FCC cable rate;
- (2) establish make-ready timelines for both wireline attachments and wireless attachments;
- (3) allow attachers to hire make-ready contractors;
- (4) establish a schedule of common make-ready charges, such as for engineering assessments and pole change-outs;
- (5) eliminate all up-front payments for make-ready;
- (6) mandate the use of boxing and extension arms;
- (7) require utilities to compile a database of available poles and attachment space; and
- (8) expedite the dispute resolution process to make it easier and faster for attachers to be granted relief.